(1992) 10 BOM CK 0060

In the Bombay High Court

Case No : Writ Petition No. 105 of 1992 and others

R.K. Rubin Proprietor Trans Continental — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 16-10-1992

Acts Referred:

Customs House Agents Licensing Regulations, 1984 — Regulation 8, 9

Citation : (1993) 1 BomCR 535 : (1993) ECR 161 : (1993) 63 ELT 222

Hon'ble Judges : Sujata V. Manohar, J;B.N. Srikrishna, J

Bench : Division Bench

Advocate : Mr. V.N. Despande, Mr. Jerry Lewis, Mr. D.M. Talegaonkar, Mr. J.P. Devadhar, Mr. S.P. Bharati, Mr. Kamal Parasrampuria, V.S. Gokhale and H.R. Shetty, for the Appellant; Mr. M.I. Sethna, Mr. H.V. Mehta and Mr. S.H. Shah, instructed by Mr. K.C. Sidhwa, for the Respondent

Judgement

Sujata Manohar, J.—The petitioners in the writ petitions are carrying on business as Customs House Agents under temporary licences granted to them under the Customs House Agents Licensing Regulations, 1984. They have not qualified for permanent licences on account of their failure to pass the written and oral examinations conducted under these Regulations. In the present writ petitions, they have challenged the manner in which these Regulations, in so far as they pertain to conducting examinations, have been applied to them. The petitioners or persons working under them have passed the written examination within the prescribed period, but have failed to pass the oral examination. Hence, their licences have been terminated.

2. Under Customs House Agents Licensing Regulations, 1984, Customs House Agents who desire to work in Customs Stations are required to hold a regular licence granted under the Regulations. Under Regulation 8, there is a provision for grant of a temporary licence. It provides as follows :-

"8. Grant of temporary licence. -

(1) Any applicant whose application is received within then last date specified in Regulation 4 and who satisfies the requirements of Regulations 5 and 6, shall be permitted to operate as Custom House Agent at the Customs Station for which the application is made initially for the period of one year against temporary licence granted by the Collector in this regard in Form B. :

Provided that when evidence is produced to the Collector that the applicant has already availed of two chances for qualifying in the written or oral has already availed of two chances for qualifying in the written or oral examination prescribed in these regulations and would like to avail of the third chance as soon a the next examination is held in terms of Regulation 9 and that the applicant has been able to account for the minimum volume of work prescribed for such agents in the course of one year''s working, the Collector may extend the aforesaid period of one year for which the temporary licence has been granted by another six months or such further period not exceeding one year to enable the applicant to avail of the third chance for qualifying in the examination in terms of Regulation 9. While granting such extension, the Collector of Customs shall satisfy himself that the requirements of Regulations 10(1)(a) and 10(1)(b) had been fully met by the applicant.

(2) Any person, whose application for grant of temporary licence under sub-regulation (1) of regulation 8 is rejected by the Collector of Customs, may represent to the Central Board of Excise and Customs against such order rejecting the grant of a temporary licence, within 30 days of the communication of the impugned order."

3. Regulation 9 prescribes an examination, which has to be passed by an applicant before he can be granted a regular licence. The relevant portions of Regulation 9 are as follows :-

"9. Examination of the applicant. -

(1) The holder of a temporary licence in the case of an individual and the person or persons who will be actually engaged in the work of clearance of goods through customs on behalf of the firm or company holding a temporary licence, as the case may be, shall be required to quality in examination, at the earliest opportunity. Such person or persons shall be eligible to appear in the examination as soon as a temporary licence is granted and shall be permitted to avail of three chances within a period of 2 years from the date of issue of the temporary licence on payment of prescribed examination fee of Rs. 250/- for each examination.

(2) The examination referred to in sub-regulation (1) shall include a written and oral examination and will be conducted twice every year. Each applicant would be permitted to avail of a maximum of three chances to qualify in the said examination but all such chances should be availed of within a maximum period of 2 years from the date of grant of temporary licence.

* * * * (4) The Collector shall also satisfy himself whether the licensee in Form No. B. if he is an individual, possesses, or in the case of a firm or company, the persons who will be actually engaged in the work relating to the clearance of the goods through customs on behalf of that firm or company, possess satisfactory knowledge of English and the local language of the Customs Station :

Provided that in the case of persons deputed to work exclusively in the docks, knowledge of English will not be compulsory. Knowledge of Hindi will be considered as an additional or desirable qualification."

When Regulations 8 and 9 read together, it becomes clear that, initially, the temporary licence is granted for a period of one year. Thereafter the applicant has to avail of two chances for qualifying in the written and oral examination, which is prescribed under Regulation 9. If the applicant fails to pass and would like to avail of a third chance as soon as the next examination is held, and, if the applicant has been able to account for the minimum volume of work prescribed for such agents in the course of one year''s working, the Collector may extend the period of temporary licence by another 6 months or a further period not exceeding one year to enable the applicant to avail of the third chance for qualifying in the examination in the terms of Regulation 9. Therefore, under Regulation 8, during the period of the temporary licence, the applicant should be given at least three chances of appearance for the written-cum-oral examination prescribed under Regulation 9. This position is again made clear under Regulation 9 itself. This regulation clearly sets out that the holder of a temporary licence in the case of an individual who is carrying on the business, and a person or persons who will be actually engaged in the work of clearance of goods through the Customs on behalf of a firm or a company, which holds a temporary licence, are required to qualify in the examination conducted under Regulation 9 at the earliest opportunity. They are eligible to appear for this examination as soon as a temporary licence is granted. They are permitted to avail of three chances within the period of two years from the date of issue of the temporary licence. Sub-regulation (2) of Regulation 9 makes it clear that the examination shall include a written and an oral examination, and will be conducted twice every year. It also reiterates that every applicant will be permitted to avail of a maximum of three chances to qualify in the examination, but these chances must be availed of within a period of a maximum of two years from the date of grant of a temporary licence.

4. In view of Regulation 9(2), the respondent has, from the year 1986, held approximately two examinations every year, except for the year 1990. We will come back to this little later. This examination consists of a written examination, carrying 100 marks, and an oral examination, also carrying 100 marks. Passing marks are 50 for each examination. The candidates are not allowed to appear for an oral examination unless they have passed the written examination. Thus, the examination conducted is a composite, written-cum-oral examination and it is necessary to provide to each holder of a temporary licence a minimum of three

chances for passing in this written-cum-oral examination over a period of two years.

5. As a candidate can appear for an oral examination only if he passes a written examination, it is possible that, while three examinations may be available to a candidate during a period of two years during which he or his firm holds a temporary licence, if he has failed to qualify in the written examination at the first attempt, he would get a chance to appear for oral examination only twice (assuming he passes the written examination at the second attempt), although such examinations are held thrice during this period. The three chances, which are available, have to be considered in this context. All that is required is that three sets of written-cum-oral examinations should be available to a candidate during this period of two years. The number of chances he will be get of appearing for an oral examination will depend entirely on when he passes the written test.

6. The petitioners have contended that, since, under Regulation 9(2), the examination is required to be conducted twice a year, every person, who is entitled to appear for such an examination during the substance of the licence should be considered as having a right to take four chances, because the temporary licence is for a period of two years. Therefore, unless four such written-cum-oral examinations are available to a candidate, there will be a breach of Regulation 9. This submission, in our view, is not warranted by the language of Regulation 9. Both Regulations 8 and 9 only speak of three chances being made available to candidate. It is true that a written examination is required to be held twice every year, but it does not necessarily follow from this that, during the subsistence of a given temporary licence, four examinations will necessarily be held. This is because a temporary licence can be issued after the screening of the application, at any time during the year. If, for example, a licence is issued after one examination during that year has already been held, and, in the second year, the licence expires before the two examinations during the second year are held, the candidate may not get four chances. Therefore, the Regulation ensures that, irrespective of when a temporary licence is issued, a candidate must get at least three chances, and the examination, therefore, must be held at least thrice during period of two years of the subsistence of a temporary licence. So long as there is available to him a possibility of appearing thrice for the written-cum-oral examination, the rights, which are available to a candidate under the Regulations are protected.

7. The examinations, which are conducted under these Regulations, are as per the directions given by the Central Directorate General of Inspection. Under the present Regulations, the first written examination was conducted on of 14th June, 1986. After the result was out, the corresponding oral examination was conducted on 19th November, 1986. The next written examination was held on 29th December, 1986, and the corresponding oral examination was held on 2nd June, 1986. Right from June, 1986 till September, 1992, two written

examinations and two oral examinations have been held in each year, with the exception of the year 1990, when, on account of considerable delay in publication of results of the first written examination in that year, the second written examination could not be held that year. This small irregularity in the conduct of examinations does not amount to any violation of the rights of the petitioners and their concerned employees so long as these persons have been given, during the subsistence of their temporary licences, at least three chances of appearing for the examinations. In this connection, Shri Sethna, learned advocate for the respondents, has produced before us a table, in which he has given, in Column No. 2, the name of the petitioner and the persons under him, who are entitled to appear for the examination. Column No. 3 gives the number of the writ petition. Column No. 4 gives the date of issue of temporary licence. Column Nos. 5, 7, 9 and 11 give the dates of the written examinations held over the corresponding period of two years, while Column Nos. 6, 8, 10 and 12 give the dates of oral examinations held over the same period. The table shows the attempts made by each of the petitioners at the aforesaid written and oral examinations and whether they have passed or failed in the examinations. This table is taken by us on record and marked ''X'' for identification.

8. From this table, it appears that the concerned persons in Writ Petitions 176 of 1992, 177 of 1992, 244 of 1992, 347 of 1992, 348 of 1992, 401 of 1991, 465 of 1992 and 1058 of 1992 had all passed in the written examinations, and had actually appeared in three oral examinations, but had failed in all three. Therefore, these petitioners have actually availed of three chances, which were given to them under Regulation 9, and have failed to pass. They cannot, therefore, have any grievance regarding compliance of this Regulation. All the other petitioners and persons working under them had the opportunity of appearing in written and oral examinations thrice during the period of subsistence of their temporary licences. They have, however, not cleared the oral examination, although all have cleared their written examination - either at first, second or third attempt. In fact, for some of the petitioners and their employees concerned who passed the written examination only at the third attempt, the corresponding oral examination was held after the expiry of the period of their temporary licences. Nevertheless, they have all been allowed to appear for the oral examination even after the period of their temporary licence had expired, so as to enable them to avail of the opportunity of appearing in the oral examination, which was held in connection with written examination in which they had passed. But all such petitioners and/or their employees have failed in this oral examination. Therefore, we do not find any substance in the grievance of the petitioners that they have not been given three chances of passing the examination conducted under the Regulations.

9. The petitioners, however, relied upon a Circular dated 19th May, 1988, issued by the Central Board of Excise and Customs to the Director General of Inspection, Customs and Central Excise, New Delhi, and to all Collectors and Additional Collectors of Customs. This circular was issued around the time when

first two years of examinations had been completed. The circular says that certain cases have been brought to the notice of the Board where, though a temporary licence-holder had qualified in the written examination prescribed under Regulation 9(2), he could not qualify in the oral examination within the period of two years from the issue of the temporary licence. The circular says that for various reasons, which are set out, and considering the small number of such cases, and pending the amendment of Regulation 9,

"the temporary licence holders who have passed in the written examination within two years from the date of grant of temporary licence, but who have not been able to qualify in the oral examination may be granted two more chances for passing the oral examination. The first of these additional oral examinations will be held by the Collector of Customs concerned, and the second by the DGI, C & CE."

Pursuant to this circular, a Public Notice was given on 28th June, 1988, under which it was stated that, for those temporary licence holders, who had passed in the written examination within two years from the date of grant of temporary licences, but who had not qualified in the oral examination, two more chances for passing the oral examination would be given, as set out therein, with certain exceptions, and it was made clear that the relaxation was confined to two additional chances in the oral examination only. The language of the circular and the public notice, in our view, makes it clear that the relaxation was a one-time relaxation and that only two additional oral examinations were to be conducted pursuant to the relaxation. This fact is made very clear in a Circular dated 6th September, 1988, which was issued within three months of the original circular, by the Under Secretary, Ministry of Finance, Department of Revenue, Government of India, to all Collectors and Additional Collectors of Customs. This letter makes a reference to the Ministry''s instructions in letter dated 19th May, 1988, and makes it clear that these instructions would apply to pending cases of temporary licences and not for any fresh cases. The letter also makes it clear that such temporary licences as are allowed to avail themselves of the two additional chances of oral examination should be allowed to function as Temporary Customs House Agents until these two oral examinations are held and the results are declared, subject to the condition that they avail themselves of the two consecutive chances for the oral examination. There is a subsequent letter of 24th September, 1991, issued by the same Ministry to the Collectors of Customs, again making it clear that the instructions contained in the Ministry of Finance letter dated 19th May, 1988, were issued as a one-time arrangement to be applicable to only those cases which were pending on 19th May, 1988. These instructions are not applicable to any case in which temporary licences were issued after 19th May, 1988. We need not refer to the rest of the clarifications in that letter.

10. In the light of these circulars, it is not possible to accept the contention of the petitioners that, although three changes may have been made available to

them during the period of subsistence of the temporary licences, they are also entitled to two additional chances of appearing in the oral examination. The petitioners have relied upon the language of the Public Notice dated 28th June, 1988, which was issued pursuant to the letter of 19th May, 1988. The public notice merely informs the public about two additional oral examinations to be conducted. It does not state that two additional oral examinations will always be conducted every year, nor does it state that the provisions of Regulation 9 are, in any manner, altered or permanently relaxed.

11. Regulation 9 has not been amended. More than three chances cannot be given on a permanent basis without such amendment. A letter from the Ministry or a public notice cannot amend the Regulations. The language of the Circular of 19th May, 1988 and subsequent circulars makes it clear that the relaxation is, by its very nature, temporary in duration and not permanent. There is, therefore, no representation held out to any of the petitioners by the respondents that the respondents would conduct two additional oral examinations for the petitioners even after the expiry of their temporary licence.

12. Mr. Sethna, learned advocate for the respondents, had also produced before us a letter dated 23rd April, 1992, from the Under Secretary, Ministry of Finance, Department of Revenue, which sets out the above position, in the light of certain clarifications which were sought by the respondents in these writ petitions. The letter sets out that the relaxation in May, 1988, was allowed because after the examinations were introduced, there were numerous cases where temporary licence-holders, who qualified in the written test, could not qualify in the oral test within a period of two years from the issue of a temporary licence. Considering the number of such cases, two additional oral examinations were allowed as a one-time arrangement. However, it was conveyed by the Board in September, 1988, that these additional two chances were not to be given in any fresh cases. The latter also clarified that subsequently there was no need felt to amend Regulation 9, because the number if chances which were given under Regulation 9 were found to be adequate.

13. Therefore, the respondents are not liable to conduct any additional oral tests for the benefit of the petitioners, nor are the petitioners entitled to appear in two additional oral tests even after the expiry of the licence.

14. Although the petitioners have neither challenged the Regulations, nor the Public Notice dated 6th December, 1989 which sets out the manner in which the written and oral tests are required to be conducted, nor the allotment of marks as between the written an oral examinations, learned advocates who appeared before us on behalf of the petitioners cited certain judgments of the Supreme Court in order to suggest that undue importance was being given to the oral examination and/or that allocation of 100 marks for an oral examination is not proper. The petitioners have not raised any legal contentions or made submissions in this connection in those petitions. The Supreme Court judgments which are relied upon are (a) Minor A. Peeriakaruppan and Sobha Joseph Vs.

State of Tamil Nadu and Others, and (b) Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others, . The first case dealt with written and oral tests conducted for admission to medical colleges, where the Supreme Court has observed generally about the unsatisfactory manner in which both oral and written test can be conducted and bout the lack of reliability in respect of these examinations and the marking system. In that case, however, the Supreme Court upheld the marks which were allotted for the interview. Similarly, in the second case, which dealt with selection of Readers in a university, there were general observations made by the Supreme Court about the unsatisfactory nature of conduction interviews, as also the Court''s dissatisfaction with the manner in which marks were allotted in written examinations. The case of A. Periakaruppan (supra) has been referred to by the Supreme Court in the latter case of Lila Dhar Vs. State of Rajasthan and Others, , where the Supreme Court says that the test which may be valid for admission to Medical Colleges may not hold valid where admission to a public service is concerned.

15. In the latest case of St. Stephen''s College etc., etc. Vs. The University of Delhi Etc., Etc., , the Supreme Court has again examined admissions based on marks secured in a qualifying examination plus marks obtained in an interview, and said that this procedure is not arbitrary. It has also observed that, where a candidate''s personality is yet to develop, greater weight has, perforce, to be given to performance in the written examination, and the importance to be attached to an interview test must be minimal. These observations would have no application to a written and oral examination conducted for granting a regular licence to a Customs House Agent.

16. In any event, we do not see any reason to pass any order in connection with the manner in which the examinations under Regulation 9 are being conducted. There is no challenge to the validity of Regulation 9. In fact, the validity of Regulation 9 was considered by a Division Bench of this Court consisting of Bharucha J. and Jhunjhunwala J. in the case of Shri Sainath Shipping Corporation and Ors. v. Collector of Customs & Anr. being Writ Petition No. 1432 of 1988 and a group of other petitions, under a Judgment and Order dated 29th August, 1991. The Division Bench, after examining the relevant provisions of these Regulations, have upheld, inter alia, the validity of Regulation 9 of the Custom House Agents Licensing Regulations, 1984. A SLP against this judgment has been dismissed by the Supreme Court. The Madras High Court (Sathiadev, J.) in Writ Petition Nos. 5315 and 5316 of 1984, by his Judgment and Order dated 18th November, 1987, has also upheld the validity if the same Regulation. In the case of Chandrakant Krishnarao Pradhan and Another Vs. The Collector of Customs, Bombay and Others, , the Supreme Court considered similar Rules under the Sea Customs Act, 1878, being Customs House Agents Licensing Rules, 1960, and upheld the validity of a similar rule there.

17. In the premises, the petitions are dismissed, and the Rule is discharged in each of the petitions with costs.

18. Writ Petition No. 1957 of 1992 is before us for Admission today. In view of our judgments in the above writ petitions, and for reasons set out therein, this writ petition is rejected.

19. Certified copy expedited.